

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

KEITH CROW,

Case No. 08-CV-3350 (PJS/FLN)

Plaintiff,

v.

ORDER

JOAN FABIAN, DAVID R. CRIST, JERRY
CLAY, LCIE STEVENSON, and LYNN
MILLING,

Defendants.

Plaintiff Keith Crow filed a Motion for Preliminary Injunction [Docket No. 17] on January 5, 2009, and another Motion for Preliminary Injunction [Docket No. 29] on May 11, 2009. Magistrate Judge Franklin L. Noel recommended that Crow's motions be denied in a Report and Recommendation ("R&R") that was dated August 13, 2009, but not filed until August 14, 2009. Docket No. 47. Crow was required to file objections within ten days after being served with a copy of the R&R. Fed. R. Civ. P. 72(b)(2).

In a motion dated August 25, 2009, and mailed on that same date, Crow sought a 60-day extension of time within which to object to the R&R. Docket No. 55. The Court granted the motion in part, ordering Crow to serve and file his objections no later than September 10, 2009. Docket No. 57. Thus, under the "prison mailbox rule," Crow had to deposit his objections in the prison mail system by September 10, 2009. *See United States v. Harrison*, 469 F.3d 1216, 1217 (8th Cir. 2006) ("Under the prison mailbox rule, a pro se pleading is deemed filed upon deposit in the prison mail system prior to the expiration of the filing deadline.").

The Court did not receive any objections from Crow by September 10, 2009. The Court waited an additional week, recognizing that Crow may have deposited his objections in the prison mail system as late as September 10, and that it might take several days for those objections to arrive. When no objections arrived by September 18, 2009, the Court adopted the R&R and denied Crow's motions for preliminary injunction.

Crow has now filed a second request for permission to file late objections to the R&R. Docket No. 71. Crow's motion was dated September 26, 2009. Along with his motion, Crow filed two pages of objections to the R&R. Docket No. 70. Crow argues that a further extension of time is necessary because he has only sporadic and at times infrequent access to photocopying and mail services in prison.

Crow's request for a second extension of time is denied. The R&R was entered on August 14, 2009, and mailed to Crow that same day. Crow presumably received a copy in the mail on or about August 18, 2009 — but certainly no later than August 25, 2009, when he filed his first motion seeking more time to submit objections. Crow had almost three weeks to write two pages of objections, photocopy (or make handwritten copies) of those objections, and mail the objections to the Court and the parties. Crow had adequate time to respond to the R&R, and thus his motion for a second extension of time is denied.

Even if the Court were to grant Crow's untimely request and consider his objections to the R&R, that would not change the outcome. For the reasons described by Judge Noel, Crow has not met his burden of proving that a preliminary injunction is warranted. Specifically, Crow has not shown that he would be irreparably harmed by not having additional legal assistance immediately made available to him. To the contrary, in the course of challenging his state-court

conviction in both state and federal court, Crow has repeatedly demonstrated his ability to acquire relevant legal materials, to conduct legal research, to make sophisticated legal arguments, and to draft, serve, and file legal papers. R&R at 5. Though the adequacy of the legal resources available to Crow may be an issue at trial, Crow has not shown that he is entitled to the preliminary relief he seeks.

ORDER

Based on the foregoing and on all of the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT plaintiff's [Request for] Permission to File Late Objection to Report and Recommendation [Docket No. 71] is DENIED.

Dated: October 15, 2009

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge